



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUL 17 2012

Ms. Jeannine Dillon
c/o Veritas Research, LLC
215 Ash Street
Denver, CO 80220

RE: MUR 6414
Jeannine Dillon

Dear Ms. Dillon:

On November 4, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 10, 2012, the Commission found, on the basis of the information in the complaint, and information provided by you and others, that there is no reason to believe you violated the Act with respect to TheRealEdMartin.com website. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Lockett".

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT:** Jeannine Dillon

MUR: 6414

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7 **I. GENERATION OF MATTER**

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9 This matter was generated by a complaint filed with the Federal Election
10 Commission by Edward R. Martini, Jr., on behalf of Ed Martin for Congress Committee.
11 See 2 U.S.C. § 437g(a)(1).

12 **II. INTRODUCTION**

13 This matter involves alleged coordination between Russ Carnahan and Russ Carnahan
14 in Congress Committee ("the Committee") and Veritas Research, LLC ("Veritas"), Michael
15 Corwin, and Jeannine Dillon, in the creation and publication of a website attacking Ed
16 Martin, Representative Carnahan's opponent in the 2010 general election in Missouri's 3rd
17 Congressional District. The website focuses on the results of a three-month investigation by
18 Corwin and Dillon, and it purports to document Martin's role as an employee in the St. Louis
19 Archdiocese in 1998-2001 as it responded to allegations of clergy sexual abuse. Corwin and
20 Dillon are prominently featured as the creators of the website, and notices on the site state
21 that they are solely responsible for its content. Complainant Ed Martin asserts that the
22 website, TheRealEdMartin.com, constituted an improperly disclosed coordinated
23 communication and should have included a disclaimer stating that it was paid for and
24 authorized by the Committee. The complaint bases its allegations on the Committee's
25 reported payments for media-related consulting and research to Veritas, a limited liability
26 company formed by Dillon, and the proximity in time of one of the payments to the date the

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1 website domain name was registered. The complainant concludes from these facts that the
2 Committee fully or partially paid for the website.

3 Upon review of the complaint, responses, and available information, it does not
4 appear that the website satisfies the content standard of the Commission's coordinated
5 communication regulations. Therefore, the Commission has determined to find no reason to
6 believe that Jeannine Dillon violated the Federal Election Campaign Act of 1971, as
7 amended, with respect to TheRealEdMartin.com website.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Factual Background**

10 In or around April 2010, the Committee hired a media firm that subcontracted
11 with Corwin, a New Mexico private investigator with extensive experience working in
12 political campaigns, to conduct opposition research on Martin. The firm paid Corwin's
13 firm, Corwin Research & Investigations, LLC ("CRI") a \$2,500 retainer for that research.
14 Joint Response at 3, Ex. E. Subsequently, the Committee hired Veritas, a newly formed
15 company, to develop information on Ed Martin's record, "including his past employment,
16 with an eye toward use in future media communications." Committee Response at 2.
17 Veritas, a Colorado limited liability company, was formed on July 23, 2010 by Corwin's
18 former colleague, Jeannine Dillon, a former television investigative news producer.
19 Colorado Secretary of State records; Corwin Suppl. Resp. at 2. Corwin apparently
20 introduced her to the Committee. See Joint Response at Ex. G. According to Corwin,
21 Dillon operated Veritas as a sole proprietorship. Corwin Suppl. Resp. at 1-2. Working
22 together through Veritas, Corwin and Dillon conducted the research and investigative
23 work as authorized by the Committee.

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1 Veritas's work for the Committee entailed two research trips to St. Louis that,
2 according to Veritas's invoices, consisted of general and document research, fieldwork,
3 interviews, pre-production research, and pre-production fieldwork by Corwin and Dillon.
4 See Joint Response, Exs. A, B, C, and D. Dillon emailed the Committee an invoice in
5 advance of the first trip, from August 12-15, 2010, reflecting a charge for a \$4,500
6 retainer to be paid before the services began and generally describing the services to be
7 performed inclusive of travel expenses. *Id.*, Ex. A. More than two weeks after the
8 second trip, from September 4-5, 2010, Dillon emailed the Committee another invoice.
9 *Id.*, Ex. C. This second invoice contained similar description of the services to be
10 performed inclusive of all research and travel expenses, and it also contained an itemized
11 breakdown for work billed at an hourly rate, a discounted flat rate for field work, source
12 fees, and itemized travel expenses, all totaling \$1,955. *Id.* This second invoice also
13 itemized services provided at "*no charge*," including updating a memo, discrete
14 narrowly-focused research topics, and media consulting (emphasis added). *Id.* The
15 Committee's reports to the Commission reflect payments of these invoices on August 2
16 and September 27, 2010, respectively.

17 In the course of providing services to the Committee, disagreements emerged over the
18 development and presentation of Veritas's research and "the scope of future work."
19 Committee Response at 2; Joint Response at 4; Committee Suppl. Resp. at 2. The
20 Committee states that Veritas wanted to produce "a journalistic exposé" on Martin's role in
21 the St. Louis Archdiocese's response to allegations of clergy sexual abuse of children, but the
22 expose was out of step with the Committee's political interests. Committee Response at 2.
23 The Committee apparently believed Veritas's approach would alienate Catholic voters. See

1 Joint Response at 4, Exs. F and G. Veritas, for its part, viewed the information it had
2 gathered as a matter of grave public interest, characterizing it as Martin's silence in the face
3 of alleged child sexual abuse. Joint Response at 4.

4 After increasingly heated discussions about the issue, including a mid-September
5 email exchange in which Corwin unsuccessfully argued that a recent comment by the Pope
6 about the Church's response to clergy-child abuse inoculated the Committee against charges
7 of anti-Catholic bias, Veritas terminated its working relationship with the Committee. *Id.* at
8 4, Ex. F; see Committee Suppl. Resp. at 2. In an October 4, 2010, termination email from
9 Corwin to Committee campaign manager Angela Barranco, Corwin maintained that Barranco
10 had objected to releasing a video addressing the Martin-clergy abuse issue on You Tube.¹

11 Joint Response, Exs. G and H. Corwin also said that he "*donated* huge amounts of time to an
12 investigation" of the issue (emphasis added). *Id.* He advised Barranco that he, Corwin, had
13 consulted with his own compliance lawyers and made clear that he viewed work conducted
14 on the issue as belonging variously to him ("the research is all mine") and to him and Dillon
15 ("[we] can take our work"); that they intended to take the work and use it in some way; and
16 that they would use it with "clear disclosure that the work is ours and not approved by a
17 campaign, candidate or committee." *Id.* Corwin also advised Barranco that Dillon would
18 continue working with him and would not do production-related work for the Committee. *Id.*

¹Corwin's October 4, 2010, email does not expressly state that the You Tube video launch and the investigation he referred to concerned the Martin-clergy abuse issue, but the Joint Response makes clear that it was. See e.g., Joint Response at 3-5 ("Because of the exceptionally difficult nature of the subject of the investigation, pedophile priests and child molestation, a rift developed . . ."; ". . . Barranco . . . grew increasingly reluctant to use the information regarding Martin's role on the Curia and the pedophile priest scandal"; "[r]ealizing there was no way that Barranco would approve using the information, a decision was made . . . to break away from the campaign"; and ". . . Corwin and Dillon decided to proceed on their own, at their own expense with the Real EdMartin.com website *and video*") (emphasis added).

1 Barranco responded by email to both Corwin and Dillon on October 6, 2010. Joint
2 Response, Ex. H. Barranco expressed disappointment but not surprise “as it has been clear to
3 me for some time that you were interested in a different direction for the project than we [the
4 Committee] were.” *Id.* She also disclaimed responsibility for Corwin and Dillon’s future
5 actions involving the issue, stating: “[f]rom this point forward Carnahan in Congress has
6 nothing to do with this matter, and we wish to have no future involvement in it. We also
7 understand that we have no further debts to you, as per your final invoice.” *Id.* The
8 following day, according to the Committee’s amended 2010 Pre-General Report, the
9 Committee made a third payment to Veritas for “research” in the amount of \$1,188.99.²

10 Veritas asserts that it delayed terminating its work relationship with the Committee
11 until it had invoiced and received payment for the work done on the second St. Louis trip and
12 says it consulted with two attorneys before it severed the relationship. Joint Response at 4.
13 On September 29, 2010, two days after the Committee paid the second invoice, Corwin
14 purchased the domain name, “The Real Ed Martin.com,” for \$12, and he subsequently
15 purchased a year of webhosting at a total cost of \$56. Complaint, Attachment J; Joint
16 Response at 5. TheRealEdMartin.com website launched on or about October 19, 2010.³ See
17 Jo Mannies, *Democratic Researcher Offers More Details on Creation of Anti-Martin*
18 *Website*, St. Louis Beacon, October 27, 2010 (“Mannies, *Democratic Researcher*”).

²The Committee had originally reported this October 7, 2010 payment in its 2010 Pre-General Report as made to “VR Research” on 18th Street in Washington, DC. There is a company called “VR Research” with offices on 18th Street and in Oakland, California. The Committee apparently did employ “VR Research” as reflected by a November 4, 2010, payment to the Oakland office of the company disclosed in the Committee’s 2010 Post-General Report. None of the responses shed any light on this issue.

³The website continues to be available at <http://therealedmartin.com/www.therealedmartin.com/HOME.html>, but it has now been revised.

1 The website's home page describes its content as "the result of a three month
2 investigation that links Ed Martin—who is running for Missouri's 3rd Congressional
3 District—to the quiet movement of pedophile priests within the St. Louis Archdiocese during
4 the years he worked there." The "About Us & The Project" section of the website notes that
5 the investigation reveals important, previously unpublished facts "that raise serious concerns
6 about Candidate Martin's integrity, judgment and ability to serve the public as a United
7 States Congressman." A video prominently posted on the website features interviews of an
8 alleged clergy abuse victim, his mother, and a former Archdiocese employee. Corwin and
9 Dillon also uploaded the video to YouTube. Joint Response at 1. Other content on the
10 website includes an extensive narrative of Martin's role as a member of the Archdiocese
11 Curia (a governing board) and director of its Human Rights Office, the Archdiocese's
12 handling of child sexual abuse allegations, details of the lawsuit filed by the family of the
13 alleged victim against the Archdiocese, and other relevant information.

14 Donating their time and services, Corwin prepared the website's written content,
15 Dillon prepared the video, and Arango designed and created the website – all without
16 compensation. Joint Response at 5. Statements throughout the website read, in pertinent
17 part, that the website complies with FEC Regulations 11 C.F.R. §§ 100.26, 100.155 and
18 100.94, that the information within it has not been "paid for, endorsed, or approved by any . .
19 . candidate or campaign," and that Corwin and Dillon are solely responsible for its content.
20 Committee Response at 2; Joint Response at 5. The Committee issued a press statement
21 denying its "knowledge, encouragement or authorization" of the website. *See Mannies,*

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1 *Democratic Researcher, supra; see also Jake Wagman, Carnahan Campaign Blames Anti-*
2 *Martin Website on Rogue Researchers, St. Louis Times Dispatch, October 27, 2010.*⁴

3 **B. Legal Analysis**

4 1. Coordinated In-Kind Contribution with Respect to the Website

5 Under the Act, no person may make a contribution, including an in-kind
6 contribution, to a candidate and the candidate's authorized political committee with
7 respect to any election for Federal office that, in the aggregate, exceeds \$2,400. 2 U.S.C.
8 § 441a(a)(1)(A) (2010 election cycle); *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R.
9 § 100.52(d)(1) (defining "contribution" as including in-kind contributions). Corporations
10 are prohibited from making any contributions in connection with a federal election.
11 2 U.S.C. § 441b. The Act defines in-kind contributions as, *inter alia*, expenditures by
12 any person "in cooperation, consultation, or concert, with, or at the request or suggestion
13 of, a candidate, his authorized political committees, or their agents" 2 U.S.C.
14 § 441a(a)(7)(B)(i). No candidate or political committee may knowingly accept a
15 contribution in violation of the Act. 2 U.S.C. § 441a(f). A political committee must
16 disclose all contributions it receives, including in-kind contributions. 2 U.S.C. § 434(b);
17 11 C.F.R. §§ 104.3(a), 104.13(a)(1).

18 Under Commission regulations, a communication is coordinated with a candidate, an
19 authorized committee, a political party committee, or agent thereof if it meets a three-
20 pronged test: (1) it is paid for, in whole or part, by a third party (a person other than the

⁴The Committee initially misreported in its 2010 October Quarterly Report the first two payments to Veritas by listing an incorrect address for Veritas in Tucson, Arizona, rather than in Colorado. The Committee amended its reports after a blog traced the misreported Tucson address to a research program at the University of Arizona called the "Veritas Research Program." *See* 24thstate.com, *The Two Suspect Payments in the Carnahan Catholic Attack*, Oct. 25, 2010.

1 candidate, authorized committee or political committee); (2) if at the time of the events at
2 issue, it satisfied one of four "content" standards;⁵ and (3) it satisfies one of six "conduct"
3 standards. *See* 11 C.F.R. § 109.21. Three of the four content standards pertinent to this
4 matter require that a communication be a "public communication" to be considered
5 coordinated.⁶ *See* 11 C.F.R. §§ 109.21(c)(2) (a public communication that republishes
6 campaign materials); 109.21(c)(3) (a public communication that expressly advocates the
7 election or defeat of a Federal candidate); and 109.21(c)(4) (a public communication that
8 references a clearly identified candidate and is publicly distributed in the candidate's
9 jurisdiction 90 days or fewer before an election). The term "public communication"
10 encompasses certain types of general public political advertising such as broadcasting,
11 newspaper, and mass mailings, including communications over the Internet placed for a fee
12 on another person's website. 11 C.F.R. § 100.26; *see also* 2 U.S.C. § 431(22).

13 Additionally, the Act and Commission regulations require all public communications
14 made by a political committee and political committee websites to include a disclaimer
15 stating that the committee paid for the communication. 2 U.S.C. § 441d; 11 C.F.R.
16 § 110.11(a). Communications paid for by other persons require disclaimers only if they
17 constitute electioneering communications or public communications that expressly advocate
18 the election or defeat of a clearly identified Federal candidate or solicit contributions.

⁵The Commission promulgated a fifth content standard to comply with a court decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). That standard, which encompasses public communications that are the functional equivalent of express advocacy, is not applicable in this matter because it did not become effective until December 1, 2010. *See* Explanation and Justification, *Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010).

⁶The fourth content standard, electioneering communications, encompasses only broadcast, cable, and satellite communications and is not relevant here. *See* 11 C.F.R. § 100.29(c)(1); 2 U.S.C. § 434(f)(3)(A).

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1 11 C.F.R. §§ 110.11(a)(2), (3), and (4); 2 U.S.C. § 441d. Such disclaimers must identify the
2 person who paid for the communication and state whether or not they are authorized by a
3 candidate or a candidate's authorized committee or agent. 11 C.F.R. §§ 110.11(b)(2) and (3).

4 The complaint maintains that the website constituted an improperly disclosed
5 coordinated communication between the Committee and Representative Carnahan and
6 Veritas, Corwin, and Dillon. See Complaint at 1, 4. It also alleges that the website failed
7 to include a disclaimer noting that the Committee paid for and authorized the site.
8 *Id.* at 2-3, 5.

9 The complaint alleges that the Committee's payments to Veritas wholly or
10 partially financed the website. The complaint specifically alleges that the website
11 satisfies the coordinated communications content standard at 11 C.F.R.
12 § 109.21(c)(4) because it clearly identified Ed Martin as a candidate and was publicly
13 distributed in Martin's congressional district 90 days or fewer before the November 2,
14 2010, election, as it was widely available on the Internet as of October 18, 2010. *Id.* at
15 3-4. The complaint also asserts that the website satisfies either the "substantial
16 discussion" or "former employee/independent contractor" standards of the conduct prong
17 at 11 C.F.R. §§ 109.21(d)(1) and (5), respectively, and relies on the same central facts for
18 both allegations: that Corwin, Dillon, and/or Veritas created and produced the website
19 after substantial discussion with, or based on the Committee's plans and needs as
20 conveyed by, the Committee, Carnahan, or their agents, because (1) the Committee made
21 payments to Veritas; (2) Corwin and Dillon are associated with Veritas; and (3) Corwin
22 and Dillon, the website creators, registered the website's domain name just two days after
23 the Committee's last apparent payment to Veritas and launched it just before the general

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1 election to help Carnahan by attacking Martin. *Id.* at 3-4. Finally, the complaint posits
2 that the payment prong is satisfied because the Committee "fully or partially" paid for the
3 website, citing the August and September payments to Veritas totaling \$6,495. *Id.*

4 The Joint Response and Representative Carnahan's response, which the
5 Committee has adopted, maintain that the website fails to constitute a coordinated
6 communication, noting that the content prong has not been met because only Internet
7 communications placed for a fee on another's website are considered "public
8 communications." Committee Response at 3; Joint Response at 1-2. The Committee
9 states that it believes Corwin and Dillon developed and published the website after
10 Veritas ended its relationship with the Committee. Committee Response at 2. Although
11 the Committee acknowledges the possibility that the website "may have drawn on
12 research" Corwin and Dillon conducted while working for the Committee, it denies that
13 Carnahan or the Committee authorized the website or had control over its content or the
14 circumstances of its publication. *Id.*

15 The Joint Response instead asserts that Corwin and Dillon proceeded independently
16 with the website at their own expense following their disagreement with and break with the
17 Committee. Joint Response at 4-5. They explicitly deny that the Committee compensated
18 Veritas or the individuals associated with creating the website for any work relating to the
19 website. *Id.* at 3. The Joint Response specifically explains that Corwin prepared the
20 website's written content, Dillon prepared the video, and Arango designed and created the
21 website through the voluntary donation of their time and services. *Id.* at 5. Although the
22 Joint Response acknowledges they were paid for work conducted for the Committee, the
23 Joint Response asserts that Veritas was paid for "other actions unrelated to Internet activity,"

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1 and that there was no legal bar that precluded Veritas and its related individuals from
2 creating the website. *Id.* at 2. Finally, the Joint Response states that they had no discussions
3 with Barranco about publishing a website to release information about the Martin-clergy
4 abuse issue, that neither Barranco nor the Committee ultimately approved a video, that the
5 Committee did not endorse or authorize the website or the video, and that neither the website
6 nor the video was ever presented to the Committee. *Id.* at 4 and 5.

7 It does not appear that there is reason to believe that the Respondents engaged in
8 unlawful coordination under the Act and Commission regulations. While the payment prong
9 of the coordinated communication test, 11 C.F.R. § 109.21(a)(1), is satisfied because Dillon
10 and Corwin are a third-party payor, the content standard is not satisfied because the website
11 does not appear to constitute a public communication. Although it appears that the
12 Committee may have paid Veritas, at least in part, to gather some of the information
13 ultimately displayed on the website, on the facts presented here, such payments do not
14 amount to the Committee having placed an Internet communication on another's website for
15 a fee.⁷ Furthermore, the Joint Response makes clear that the individuals responsible for the
16 website were not compensated for their work in hosting, designing or creating the website or
17 its written content.⁸

18 Moreover, the September and October emails between the Committee and individuals
19 associated with Veritas present a compelling case that the Committee did not, in fact, engage
20 in coordinated conduct. *See* 11 C.F.R. § 109.21(a)(3), (d). Those contemporaneous

⁷The same analysis would apply to the placement of the website video on YouTube since one does not pay a fee to place items on YouTube.

⁸ An individual or group of individuals' uncompensated personal services related to Internet activities, like creating, maintaining or hosting a website, is not a contribution under the Act. 11 C.F.R. § 100.94.

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1 exchanges demonstrate that the Committee did not want to rely on the Martin-clergy abuse
2 allegations because it believed that such an attack would backfire by alienating Catholic
3 voters. Joint Response, Exs. F, G and H. Rather, the preponderance of the available facts –
4 including those emails – shows that Corwin and Dillon crafted and developed the narrative
5 and prepared the video content on the website because *they* wanted to communicate *their*
6 view of the issue to a mass audience notwithstanding that the Committee declined to do so.
7 *Id.* Corwin's October 4 resignation email, *id.*, Ex. G, further amplified by the discussion in
8 the Joint Response, indicates that a video concerning the Martin-clergy abuse issue was
9 discussed with the Committee. But the Joint Response specifically states that no discussion
10 took place with Barranco about setting up a website to release the information, and no one
11 from the Committee was shown or approved the website content or video. Joint Response
12 at 4.⁹

13 Therefore, the website did not constitute a coordinated in-kind contribution from
14 Jeannine Dillon and no disclaimer was required. Accordingly, the Commission has
15 determined to find no reason to believe that Jeannine Dillon violated the Act with regard to
16 TheRealEdMartin.com website.

⁹Once the website went live, the campaign called upon Martin to address the issue raised by the website. See Jo Mannies, *Democratic Researcher, supra*; see also Jack Wagman, *Martin Files Complaint over Website Done by Researchers Who Worked for Carnahan*, St. Louis Post Dispatch, Oct. 29, 2010. Nonetheless, that action does not support a conclusion that there is reason to believe the Respondents engaged in unlawful coordination. First, the activity does not constitute actionable "coordination" standing alone, and no other evidence suggests that the parties in fact secretly coordinated here. And most importantly, not only do the Respondents deny coordination, their contemporaneous internal email traffic from the time in question refutes any inference that they did.